

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BUILDERS UNLIMITED, INC.,

Plaintiff-Appellee,

v

DONALD OPPENHUIZEN,

Defendant-Appellant.

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UNPUBLISHED

July 12, 2005

No. 254789

Kent Circuit Court

LC No. 03-009124-CH

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the order granting partial summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(9) and (10).<sup>1</sup> This quiet-title action arose from the forfeiture, foreclosure, and sale of property initiated by Kent County for failure to pay delinquent property taxes. The parcel at issue is located on Lafayette Street in Grand Rapids. On appeal, defendant argues that because his predecessors in interest to the property never received notice of the foreclosure as required by MCL 211.78i of the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, the foreclosure and subsequent sale to plaintiff were invalid and defendant's property interest remains. We disagree and affirm.

On April 5, 2001, Kent County recorded a certificate of forfeiture of real property, which indicated that on March 1, 2001, the Lafayette parcel was forfeited to the county for nonpayment of taxes for the years 1997 and 1999. On April 25, 2002, a notice of judgment of foreclosure was recorded, which indicated that a judgment of foreclosure had been entered by the circuit court on March 1, 2002, and that the judgment became "final and unappealable 21 days after its entry." Defendant purportedly acquired his interest in the property pursuant to a quitclaim deed executed on August 30, 2002, by one Jacqueline Bell, a petitioner in the estate of M. Ruth Exo

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<sup>1</sup> There were a number of defendants named in this quiet-title action as persons or entities that might hold or own an interest in the property. This appeal only involves defendant Oppenhuizen (hereinafter "defendant" in the singular) as the other defendants were defaulted. Because multiple defendants were made parties to this suit, plaintiff's motion relative to defendant was only for partial summary disposition. Eventually, the entire suit was concluded pursuant to an order granting final judgment based on the defaults.

and the estate of Robert Moulenbelt, which estates allegedly owned interests in the property.<sup>2</sup> Plaintiff then purchased the property in September 2002 from Kent County for \$17,000 at auction pursuant to a quitclaim deed.

Plaintiff filed its action to quiet title, naming defendant as an individual who may claim an interest in the property based upon a quitclaim deed on record at the register of deeds. In its complaint, plaintiff alleged that it is entitled to a fee simple interest in the property as against all others pursuant to the final judgment of foreclosure and MCL 211.78k, where it purchased a vested fee simple interest from Kent County.

Plaintiff moved for partial summary disposition, arguing that defendant was statutorily precluded under MCL 211.78l(1) from claiming any possessory interest based on a lack of notice under the GPTA. In response, defendant argued that he still had an interest in the property because Bell transferred a legitimate interest to him pursuant to the quitclaim deed and the estates and heirs never received notice as to the foreclosure as required by MCL 211.78i, which provides a notice requirement for those parties holding a property interest. Defendant, however, admitted that he acquired his interest in August 2002 through probate court proceedings, which was after the judgment of foreclosure was entered and the 21-day redemption period lapsed.

In granting plaintiff's motion for summary disposition, the trial court held that defendant was precluded from challenging plaintiff's ownership interest in its quiet-title action on the basis of lack of notice because, following a final judgment of foreclosure, the only remedy under the GPTA is an action for monetary damages in the court of claims.

The trial court granted plaintiff's motion for partial summary disposition pursuant to MCR 2.116(C)(9) and (10). On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Under MCR 2.116(C)(10), this Court must review the record in the same manner as the trial court to determine whether any genuine issue of material fact exists and whether the movant is entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The documentary evidence is viewed in a light most favorable to the party opposing the motion. *Id.* MCR 2.116(C)(9) provides for summary disposition where the opposing party fails to state a valid defense to the claim asserted. Summary disposition is proper under MCR 2.116(C)(9) if the defenses are so clearly untenable as a matter of law that no factual

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<sup>2</sup> Defendant asserts that Exo owned the property pursuant to a 1952 deed, that she died in 1985, which resulted in her only son Moulenbelt obtaining an interest, and that Moulenbelt died in 1992. Defendant further asserts that Bell is Moulenbelt's daughter and that Bell, as petitioner, commenced probate proceedings in August 2002 as to the estates of both Exo and Moulenbelt. With respect to Exo's estate, a petition and order for assignment lists and describes the property at issue and assigns 100% of it to Moulenbelt. In regard to Moulenbelt's estate, a petition and order for assignment lists and describes the property and assigns it to Bell in the amount of \$5,000 (asset given a value of \$5,000 in petition) for funeral and burial expenses that she paid on Moulenbelt's death.

development could possibly deny the plaintiff's right to recovery. *Allstate Ins Co v JJM*, 254 Mich App 418, 421; 657 NW2d 181 (2002).

Defendant first argues that he has a viable legal interest in the property at issue because his predecessors in interest were not sent a notice of the foreclosure pursuant to MCL 211.78i. We disagree.

At the time of this foreclosure in 2002, MCL 211.78k provided, in pertinent part:

(5)(b) [The circuit court judgment shall specify that] fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e)[not applicable here], without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after entry of the judgment.

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(6) [F]ee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after the entry of judgment shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7)[addresses appeals to this Court after the judgment is entered].<sup>3</sup>

Plaintiff's position is that because absolute title vested with Kent County and Kent County sold the property to plaintiff at auction, defendant's only remedy in this case is monetary damages. MCL 211.78l provides, in relevant part:

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.

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<sup>3</sup> Pursuant to 2003 PA 263, fee simple title now vests absolutely in the foreclosing governmental unit "on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section." MCL 211.78k(5)(b).

(2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

Therefore, we agree with plaintiff's position and find that because MCL 211.78k provides that all redemption rights are excluded after 21 days of the final judgment of foreclosure, and defendant, or his predecessors in interest, failed to file an appeal to this judgment, the trial court correctly ruled in favor of plaintiff. While MCL 211.78k, standing alone, may leave one questioning whether absolute title vests with a governmental unit where required notice was not provided,<sup>4</sup> MCL 211.78l(1) clearly and unambiguously contemplates situations where no notice was given, yet it does not result in the divestiture of fee simple title in the foreclosing governmental unit as created by § 78k, but leaves open only a claim for monetary damages. The Legislature evidently chose to keep chains of title clear and property interests unencumbered in case of notice failures, but still provide an unnoticed interest holder refuge in a monetary action for damages.

Defendant argues that the court of claims only has jurisdiction over actions against the state and cannot address the constitutional arguments,<sup>5</sup> and defendant questions who he would sue in the court of claims. While it might appear that defendant could sue Kent County, the entity responsible for providing notice, pursuant to the jurisdictional provisions of MCL 211.78l(2) granting authority to the court of claims, we decline to take a position on the matter as the issues are properly left to the court of claims for resolution should defendant seek to pursue a case in that forum. We do note that MCL 211.78l(1) speaks of an "owner" of an "interest" who claims lack of notice filing suit for monetary damages, yet defendant did not own an interest in the property at the time notice was required, calling into doubt defendant's standing in such an action. For purposes here, we further note that MCL 211.78i(2) requires the foreclosing governmental unit to apprise "owners of a property interest" of the foreclosure proceedings through proper notice. As this Court noted in *In re AMB*, 248 Mich App 144, 176; 640 NW2d 262 (2001), "it is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice." Defendant had no right to notice.

The GPTA simply does not permit defendant to pursue an ownership claim or defense under the circumstances presented. Defendant's assertion that he is solely and properly raising a sound constitutional argument as a defense to a declaratory action seeking to quiet title lacks merit because he has no standing to assert any due process violations possibly suffered by the estates and heirs, *AMB*, *supra* at 173-176, because defendant does not claim that plaintiff violated constitutional protections, as opposed to Kent County, a nonparty, *Crawford v Dep't of*

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<sup>4</sup> As argued by defendant, we point to MCL 211.78k(5)(f), which, in 2002, provided that a foreclosure judgment shall include "[a] finding that all persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity." However, this provision does not support the proposition that the judgment as to title is invalid if the finding is ultimately deemed incorrect, especially in light of the language in MCL 211.78l.

<sup>5</sup> We address defendant's constitutional arguments below.

*Civil Service*, 466 Mich 250, 258; 645 NW2d 6 (2002), and because the constitutional argument is not adequately set forth, *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

We have examined all of defendant's remaining arguments and conclude that there exists no basis for reversal.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Pat M. Donofrio